

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q76820

Kazunobu OKAZAKI, et al.

Appln. No.: 10/634,125

Group Art Unit: 1612

Confirmation No.: 5755

Examiner: Sabiha N. QAZI

Filed: August 5, 2003

For: PLASMA VOLUME EXPANDING FORMULA

PETITION FROM RESTRICTION/ELECTION REQUIREMENT

UNDER 37 C.F.R. § 1.144

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the Action dated September 19, 2008, the Examiner issued a restriction requirement, requiring Applicants to select one of the following groups for prosecution on the merits:

Group I - Claims 10, 12, 14, 16 and 17; and

Group II - Claims 11, 13, 15 18 and 19.

On October 17, 2008, Applicants elected Group I, claims 10, 12, 14, 16 and 17 with traverse. Applicants also added new claim 20 which depends from claim 10 of the elected group and therefore reads on the elected invention.

Applicants traversed the restriction requirement on the basis that the Examiner had not met her burden of establishing that the invention of Group I and the invention of Group II are unrelated in view of the following.

First, the claimed invention of both Groups I and II is a method of increasing plasma volume. Therefore the Examiner's assertion that the claims of Group I are drawn to a composition and the claims of Group II are drawn to a composition containing food is incorrect.

Also, in the method of the claims of Group II, a food containing a gel composition is employed and not "a composition containing food" as indicated by the Examiner.

Further, the Examiner has not provided a reason as to why he believes that the inventions are not disclosed as being capable of use together.

Moreover, the inventions of Group I and II both have the same effect of increasing plasma volume and the same mode of operation based on administration.

Even further, the search would not be an undue burden on the Examiner since the claims of both groups recite the same gel composition.

In the Action mailed August 19, 2009, the Examiner maintained that the claimed methods are different because the method of Group I is a method containing a gel composition, which can be used topically whereas Group II is drawn to a gel composition containing food. The Examiner also asserted that new claim 20 is drawn to a gel composition contained in food and should be included in Group II.

Applicants maintain that the restriction requirement should be withdrawn and the claims of Group I and Group II examined together because the claims of Group I are drawn to *a method for increasing plasma volume, comprising administering a gel composition* and the claims of Group II are drawn *a method for increasing plasma volume, comprising administering a food*

gel composition. Thus, the claims of both Groups I and II are directed to the same method, i.e., *a method for increasing plasma volume, by administering a gel composition having the same ingredients.*


Further, claim 20 is dependent on Claim 10 in Group I. Therefore, by virtue of this dependency, Claim 20 is part of Group I. Further, since claim 10 is a generic claim, claim 20 should be allowable when Claim 10 is found to be allowable. Thus, Applicants respectfully submit that claim 20 should be examined with claim 10 of Group I from which claim 20 depends.

Thus, Applicants respectfully submit that the restriction requirement should be withdrawn.

Favorable consideration is requested.

Please charge the petition fee under 37 C.F.R. § 1.144 or 37 C.F.R. § 1.181, if required, to Deposit Account No. 19-4880.

Respectfully submitted,


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Date: May 17, 2010